

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

946 WRIT PETITION NO.4588 OF 2019

UMAKANT PRABHAKARRAO KAVTHEKAR
VERSUS
THE CHIEF OFFICER MUNICIPAL COUNCIL, JINTUR

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Advocate for Petitioner : Mr. Kale Mahesh P

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CORAM : V. K. JADHAV, J.
DATE : 14.01.2020

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. I find no substance in this Writ Petition. The petitioner-original plaintiff instituted the suit bearing Regular Civil Suit No.16 of 2001 simplicitor for decree of perpetual injunction and in the pending suit filed an application Exh.50 for appointment of the Court Commissioner, in the backdrop of some subsequent events. The learned Judge of the Trial Court by impugned order dated 23.01.2019, rejected the said application.
3. The learned counsel for the petitioner-original plaintiff submits that during the pendency of the suit, defendant-

Municipal Council, Jintur under the garb of widening of D.P road, dismantled the construction of the plaintiff over the suit property. The respondent-Municipal Council though initiated the acquisition proceedings for the said D.P road, but the said proceedings are yet to be finalized. Moreover, the respondent-original defendant without fixing the points of the D.P road as shown in the map, had changed the location of the road and dismantled the construction of the petitioner-plaintiff. The learned counsel submits that in the backdrop of these subsequent events, though the suit is instituted simplicitor for a decree of perpetual injunction, it is necessary to appoint the T.I.L.R., Jintur as a Court Commissioner for fixing the points of the D.P road, as shown in the map and to ascertain the factual position of the road and the suit property. The learned counsel submits that the Trial court has not considered the same and rejected the application erroneously.

4. None appears for the respondent though duly served.

5. The petitioner-plaintiff has instituted the suit simplicitor for a decree of perpetual injunction. The learned Judge of the Trial Court has rightly observed that the contention raised in

the application Exh.50 are not at all pleaded in the plaint. The petitioner-plaintiff has not carried out any amendment in the pleadings. The petitioner-plaintiff is silent about the construction of the D.P. road and its demarcation. Furthermore, in deciding the suit instituted for a decree of perpetual injunction, the appointment of the Court Commissioner is not necessary. I do not find any fault in the order passed by the Trial Court. There is no substance in the Writ Petition. Hence, I proceed to pass the following order :

ORDER

- (I) The Writ Petition is dismissed.
- (II) The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-